

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Application of:

Hartmann et al.

Examiner: Deberry, R.

Serial No.: 09/708,506

Group Art Unit: 1647

Filed: November 9, 2000

Title: ERYTHROPOIETIN FORMS WITH IMPROVED PROPERTIES

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**RESPONSE TO RESTRICTION REQUIREMENT**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

In response to the Restriction Requirement dated June 28, 2002, Applicants hereby elect with traverse Fc-EPO<sub>m</sub> from claim 1a; Pro<sub>90</sub>→Ala from claim 6; C-terminal truncation with the amino acid position at 108 from claim 7; a fusion protein where position 33 is not Cys from claim 12; and a fusion protein with a Pro<sub>90</sub>→Ala mutation from claim 14.

The Examiner is urged to withdraw the restriction requirement/election because the claims relate to modified Fc-EPO fusion proteins and include sufficiently few species that a search and examination of the full scope of the claims would not impose a serious burden on the Examiner. Further, Applicants point out that such a restriction/election made by the Examiner would result in Applicants filing numerous applications to obtain patent protection for the claimed invention.

Although it is believed that a restriction/election is not proper in the subject application as discussed above, Applicants submit that a more reasonable restriction of claim 1a would be the following:

- Group A consisting of (i), (iii), (iv), and (ix) (i.e., mutated Fc-EPO, mutation in the EPO residue);
- Group B consisting of (v) and (vi) (i.e., Fc<sub>m</sub>-EPO, Fc<sub>m</sub>-EPO<sub>m</sub>); and
- Group C consisting of (ii), (vii), (viii) and (x) (i.e., fusions with a linker).

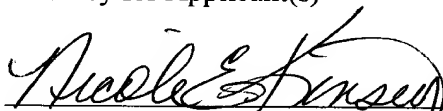
Applicants also remind the Examiner that if such restriction/election is made final, the Examiner is required to extend the search to the non-elected species if no prior art is found that anticipates or renders obvious the elected species. See MPEP §803.02.

No fee is believed to be due with this response, however, the Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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